

# **EXHIBIT D**

**Alexander, Andrew**

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**From:** Alexander, Andrew  
**Sent:** Tuesday, November 9, 2021 6:24 PM  
**To:** Simmons, Joshua L.  
**Cc:** #Hayden-TakeTwo; Hayden-TakeTwo; Cipolla, John; McMullen, Dan; Likens, Dustin; Pinter, Kimberly; Cavanagh, Matthew J.  
**Subject:** RE: Hayden v. 2K--James, Green, and Thompson Declarations

Josh,

In the absence of any response to my message below from last week, please provide Mr. James's, Mr. Green's, and Mr. Thompson's contact information by noon tomorrow or Mr. Hayden will have to seek relief from the Court.

Regards,

Andy

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**From:** Alexander, Andrew  
**Sent:** Thursday, November 4, 2021 2:42 PM  
**To:** Simmons, Joshua L. <joshua.simmons@kirkland.com>  
**Cc:** #Hayden-TakeTwo <HaydenTakeTwo@kirkland.com>; Hayden-TakeTwo <Hayden-TakeTwo@Calfee.com>; Cipolla, John <JCipolla@Calfee.com>; McMullen, Dan <dmcullen@calfee.com>; Likens, Dustin <DLikens@Calfee.com>; Pinter, Kimberly <kpinter@calfee.com>; Cavanagh, Matthew J. <mcavanagh@mcdonaldhopkins.com>  
**Subject:** Hayden v. 2K--James, Green, and Thompson Declarations

Josh,

We were surprised to see that Take-Two submitted declarations from Mr. James, Mr. Green, and Mr. Thompson in support of their summary judgment motion, despite not identifying them as witnesses in response to Mr. Hayden's Interrogatory No. 13, which asks for "all persons with knowledge of facts relating to the affirmative defenses." This interrogatory clearly sought the identity of witnesses with testimony on which Take-Two might rely. It appears that Take-Two's approach was to hide this third-party testimony until after fact discovery. Given Take-Two's heavy reliance on these declarations to support their affirmative defenses, this surprise tactic is particularly prejudicial and unfair to Mr. Hayden.

Accordingly, Mr. Hayden is requesting Mr. James's, Mr. Green's, and Mr. Thompson's contact information **as soon as possible** so he may contact them. Take-Two declined to provide this contact information in its initial disclosures. If Take-Two is not willing to provide this information or plans to oppose Mr. Hayden's rights to examine these witnesses, Mr. Hayden requests that Take-Two withdraw the declarations.

Regards,

Andy